Step v Stokes [2010] NTCA 4

PARTIES:	**VACLAV STEP**
	v
	VICKI B STOKES
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CIVIL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	LA 4 of 2009 (20618554)
DELIVERED:	8 June 2010
HEARING DATES:	8 June 2010
JUDGMENT OF:	RILEY, SOUTHWOOD & KELLY JJ
APPEALED FROM:	OLSSON AJ

CATCHWORDS:

Collins v Minister for Immigration and Ethnic Affairs [1981] 58 FLR 407

REPRESENTATION:

Counsel:

Applicant:	Self
Respondent:	T Anderson

Solicitors:

Applicant:	Self
Respondent:	Solicitor for the Northern Territory

Judgment category classification:	C
Judgment ID Number:	Ril1021
Number of pages:	5

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Step v Stokes [2010] NTCA 4
No. LA 4 of 2009 (20618554)

BETWEEN:

VACLAV STEP
Applicant

AND:

VICKI B STOKES
Respondent

CORAM: RILEY, SOUTHWOOD and KELLY JJ

REASONS FOR JUDGMENT

(Delivered 8 June 2010)

RILEY J:

Introduction

[1] The applicant is self represented and has been self represented throughout these proceedings. He was the plaintiff in proceedings in the Local Court against the respondent in which he alleged the respondent committed the torts of misfeasance in a public office with malicious intent and defamation.

[2] The matter was heard on various dates between 10 December 2007 and 1 December 2008. On 23 April 2009 the learned Chief Magistrate dismissed each of the claims and provided detailed reasons for so doing. The applicant appealed against the decision.

[3] The respondent to the appeal, who is also the respondent in this application, applied to the Supreme Court for an order that the applicant give security for costs in relation to the appeal. That application came before Olsson AJ and, on 16 November 2009, his Honour concluded that the respondent had "plainly established the conditions prerequisite to the making of an order for security costs" and proceeded to make the order.

[4] The applicant wished to appeal the decision of Olsson AJ and sought leave to appeal as required by s 53 of the *Supreme Court Act*. The application was made out of time and he sought the appropriate extension of time. Both applications came before a judge of the Supreme Court who granted the extension of time but refused to grant leave to appeal. The applicant now brings the matter before the Court of Appeal constituted by three judges pursuant to the provisions of s 53(3) of the *Supreme Court Act*.

[5] The sole ground of appeal in relation to which leave is sought is that the learned judge erred in finding that “the appeal has little apparent prospect of success".

[6] In the course of his reasons for decision the learned Judge addressed each of the identified grounds of appeal in relation to the judgment of the Chief Magistrate in the Local Court. Having done so, the conclusions of his Honour were expressed as follows:

> In short, it is apparent to me that, generally speaking, the appellant has, in the main, sought to dress up a variety of issues relating to findings of fact, as asserted errors of law.

> In my opinion, it is obvious that at least most aspects of the appeal have little or no chance of success because, on the information presently before me, they do not seek to raise questions of law within the meaning of s 19 of the *Local Court Act*. It must inevitably be concluded that the appeal, as presented, has little prospect of success.

[7] Section 19 of the *Local Court Act* permits an appeal to the Supreme Court from the Local Court "on a question of law".

[8] In advancing his application for leave to appeal the applicant reasserted each of the grounds of appeal. He expressed his disagreement with the conclusion of the Judge that the appeal had little apparent prospect of success and submitted that the decision of the Local Court "is so much against the evidence or the weight of evidence that it amounts to error of law". He then submitted that "there was no evidence before Blokland CM upon which a decision could be properly based" and made reference to *Collins v Minister for Immigration and Ethnic Affairs*.[1] The relevant passage from that judgment is in the following terms:

> An appellant who attacks a conclusion of the Tribunal because of deficiency of proof said to amount to error of law must show, if he is to succeed, that there was no material before the Tribunal upon which the conclusion could properly be based.

[9] The applicant then went on to provide what he described as "examples of false evidence". It is readily apparent from reviewing the matters to which the applicant referred that his complaint is not that there was no material before the Local Court upon which the conclusions of fact of the Chief Magistrate could have properly been based but, rather, that the evidence was

[1] [1981] 58 FLR 407 at 411.

"false", "irrelevant", or "inadmissible", or that a conclusion was "against the evidence". In effect, the applicant seeks reconsideration of the evidence and for different conclusions to be reached in the manner that may be available on an appeal by way of rehearing but is not available in an appeal under s 19 of the *Local Court Act*.

[10] The applicant also complained that the Chief Magistrate erred in law in refusing to admit documents or to allow the applicant to reopen his case in an effort to have documents admitted into evidence. In the circumstances that prevailed, we agree with Olsson AJ that it is difficult to see how those documents could properly be admitted in accordance with the rules of evidence, or as relevant. No basis has been identified to suggest the approach adopted by the learned Chief Magistrate was in error.

[11] The applicant did not submit that the Chief Magistrate erred in her application of the law in relation to the substantive issues in the proceeding being the tort of misfeasance in public office and the allegation of defamation. A review of the judgment reveals that the Chief Magistrate identified the applicable law and sought to apply it to the facts as she found them. There has been no complaint in this regard. The situation is, as Olsson AJ observed:

> As a generalisation it must be said that, in so far as the appeal seeks to impugn the findings of the learned Chief Magistrate, in the main it seeks to do so with regard to certain procedural aspects of the trial and the merits arising on the evidence, rather than on the footing that she in some way allegedly erred in legal principle in addressing the two causes of action.

[12] In our opinion Olsson AJ gave appropriate reasons for his decision. We have reviewed the reasons of Olsson AJ in relation to each of the grounds of appeal and we agree with his observations and his ultimate assessment that the appeal has little apparent prospect of success.

[13] The application for leave to appeal is refused.
